

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

DAMON LOUIS WHEELOUS,

Petitioner-Appellant.

v.

No. 97-6859

DAVID GARRAGHTY, Warden;
ATTORNEY GENERAL OF THE STATE OF
VIRGINIA,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Raymond A. Jackson, District Judge.
(CA-97-444-2)

Submitted: August 11, 1998

Decided: September 2, 1998

Before WILKINS, NIEMEYER, and LUTTIG,
Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Damon Louis Wheelous, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Damon Louis Wheelous appeals from the district court's order dismissing his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1998) as untimely filed. We vacate and remand the district court's decision. The record does not reveal when Appellant delivered his petition to the prison authorities for mailing to the court. Accordingly, we grant a certificate of appealability and remand the case for the district court to determine whether Wheelous' petition was delivered to prison authorities on or before April 23, 1997, under Houston v. Lack, 487 U.S. 266 (1988). See Brown v. Angelone, ___ F.3d ___, 1998 WL 389030, at *6 (4th Cir. July 14, 1998).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED